

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TANIELLE SHURNEY,
Plaintiff,

vs.

No. CA 05-196 Erie
CIVIL ACTION
ELECTRONICALLY FILED PLEADING

**SCOTT'S ECONO INN, INC.
SCOTT'S SPLASH LAGOON, INC.**

**SEAN PIERCE, INDIVIDUALLY AND
IN
HIS CAPACITY AS A TROOPER OF
THE PENNSYLVANIA STATE POLICE**

**JOHN DOE, INDIVIDUALLY AND IN
HIS CAPACITY AS THE SUPERVISOR
OF TROOPER SEAN PIERCE OF THE
PENNSYLVANIA STATE POLICE**

Defendants

DEFENDANT, SCOTT ECONO INN, INC.'S PRE-TRIAL STATEMENT

AND NOW, comes the Defendant, Scott Econo Inn, Inc., by its attorneys, BASHLINE & HUTTON and GERALD J. HUTTON, ESQUIRE, and files the following Pre-Trial Statement pursuant to Local Rule 16.1.4:

I. PRETRIAL NARRATIVE STATEMENT

On June 30, 2004, Tonya Traylor, a resident of Streetsboro, Ohio discovered that her personal bank account had been accessed and her funds taken through the unauthorized use of her debit card number. Tonya Traylor learned that a total of four unauthorized purchases were made, including a Splash Lagoon reservation and that \$198.79 had been transferred from her

bank account to pay for this reservation. The Splash Lagoon reservation was made by telephone by a person that identified herself as Tanielle Shurney. Tonya Traylor's debit card number was used to place the reservation and there is no issue that the use of Ms. Traylor's debit card to place this reservation was illegal. Tonya Traylor, on learning of the illegal use of her debit card immediately visited the Streetsboro Police Department where she provided this information to Officer Jon Hurley, who prepared a criminal complaint and instituted a criminal investigation.

Tonya Traylor then contacted Scott's Splash Lagoon and informed them of the unauthorized use of her debit card number. Officer Hurley also contacted Scott's Splash Lagoon and informed employee Patty Purchase that a criminal investigation had been commenced into the unauthorized use of Tonya Traylor's debit card number for the reservation. Officer Hurley after alerting the Pennsylvania State Police also asked Econolodge and Splash Lagoon employees to cooperate in the investigation. Subsequently, the Pennsylvania State Police also requested that Splash Lagoon cooperate in the investigation by calling when the person appeared at the Econolodge to claim the reservation.

On July 3, 2004, Ms. Shurney appeared to claim her reservation at the Econolodge, and the Pennsylvania State Police were simply so notified by the reservation clerk. Plaintiff personally completed the reservation. Plaintiff was arrested by Trooper Pierce, who prepared and presented criminal complaint against plaintiff and affidavit of probable cause. Plaintiff was taken before District Justice Frank Abate, and plaintiff thereafter incarcerated pending bail. At her preliminary hearing, criminal charges were dismissed by District Justice Dwyer, reportedly due to a lack of evidence to show that this individual had personally used the stolen debit card information in making the reservation. Plaintiff claims that the reservations were made by another individual, Tracey Smith, also a Cleveland resident, who at times was identified by

plaintiff as her sister, cousin, and close friend.

No evidence exists that Econolodge or Splash Lagoon employees requested the arrest, prosecution or incarceration of Ms. Shurney. That is, although defendant Econolodge believes that the actions of the authorities in this matter, including the actions of defendant Trooper Sean Pierce, were lawful, and based on probable cause with reasonable belief that plaintiff had committed the crimes for which she was accused, and that plaintiff has no valid civil rights action against any of the parties, nonetheless, this defendant respectfully submits that it was not a party to plaintiff's arrest or prosecution. Contrary to the allegations contained in plaintiff's Complaint, defendant Econolodge did not institute the criminal investigation, did not arrest plaintiff, did not request plaintiff's arrest, did not participate in plaintiff's criminal prosecution, and did not incarcerate or cause plaintiff's incarceration. Under these circumstances defendant and defendant's hotel reservation clerk were not acting in collusion with the state police and were not state actors within the meaning of the civil rights laws. In short, defendant Econolodge has not caused plaintiff the alleged loss of any civil rights.

II. LIABILITY WITNESSES

Defendant may call any or all of the following individuals to testify as liability witnesses at time of trial:

1. Tonya Traylor
10039 B Dolores Drive
Streetsboro, Ohio 44241
2. Officer Jon M. Hurley
Patrolman Troy Beaver
c/o Streetsboro Ohio Police Department
2080 State Route 303,
Streetsboro, Ohio 44241

3. Trooper Sean Pierce
Troopers Szymanski
Trooper Carrie Bailey
Trooper Linda Martin
Trooper Angelo
Corporal Pulson
c/o Pennsylvania State Police
Erie Pennsylvania
4. Patricia Purchase
Jeffrey Mona
Kristin Mooney
c/o Scott's Enterprises
Erie Pennsylvania
5. Sandy Calabris
c/o Scott's Econo Inn, Inc.
Erie, Pennsylvania
6. District Justice Frank Abate,
District Court 06 – 3-02
Erie, Pennsylvania
7. Records Custodian and/or records custodian
Streetsboro Police Department
8. Representative and/or records custodian of
Key Bank, including Regina Clein and Kim Paterson
Customer Service Department
34 North Main St.
Dayton, Ohio 45402
9. Representative and/or records custodian
Pennsylvania State Police Department
10. Representative and/or records custodian
Erie County Prison
11. Any and all persons named in the Pre-Trial Statements of the Plaintiff or other Defendants; any person identified in the Pleadings, Answers to Interrogatories, Request for Admission or other discovery proceedings in this action; and any person needed to authenticate any documents or exhibits.

- 12 Defendant expressly reserves the right to offer rebuttal and or impeachment evidence at trial and reserves the right to offer individuals to identify documents and exhibits used in such rebuttal and or impeachment.

III. DAMAGE WITNESSES

Defendant may call the following witnesses as to damage in the trial in this matter:

1. All those persons previously listed as liability witnesses.
2. Any and all persons named in the Pre-Trial Statements of the Plaintiff and other Defendants and any person identified in the Pleadings, Answers to Interrogatories, Request for Admission or other discovery proceedings in this action.
3. Any person needed to authenticate any documents or exhibits.
4. Defendant expressly reserves the right to offer rebuttal and or impeachment evidence at trial and reserves the right to offer individuals to identify documents and exhibits used in such rebuttal and or impeachment.

IV. EXHIBITS

1. Erie County Prison Inmate Commitment Summary Report and Records Inventory and all attachments thereto.
2. Streets Borough Police Department Uniform Incident/Offense Report Incident Number 04-02502 and all attachments thereto.
3. Commonwealth of Pennsylvania Police Criminal Complaint and all attachments thereto.
4. Key Bank records and correspondence regarding the Tonya Traylor's Debit Card transactions.
5. Statement of Tonya Traylor to Streetsboro Police Department
6. Pennsylvania State Police Incident Report E01 -1097681; Pennsylvania State Police Criminal Complaint and Affidavit of Probable Cause OTN: L199405-3
7. Deposition transcript of Trooper Sean Pierce and all exhibits attached thereto.
8. Deposition transcript of Officer Jon Hurley and all exhibits attached thereto.
9. Deposition Transcript of Tonya Traylor and all exhibits attached thereto.

10. Deposition Transcript of Tanielle Shurney and all exhibits attached thereto.
11. Deposition Transcript of Patricia Purchase and all exhibits attached thereto.
12. Any documents listed in the Pre-Trial Statement of the other parties to this action or produced or referenced in the course of discovery in this action.
13. Defendant expressly reserves the right to offer rebuttal and or impeachment evidence at trial and reserves the right to offer individuals to identify documents and exhibits used in such rebuttal and or impeachment.

Defendant reserves the right to utilize at trial as exhibits any and all documents discovered between the date of this Pre-Trial Statement and the time of trial and any and all documents made available through discovery.

Copies of the exhibits listed herein are attached to Defendants' Joint Motion for Summary Judgment.

V. LEGAL ISSUES

The Defendants' Joint Motion for Summary Judgment contains the legal issues involved in this litigation. Briefly defendant submits that there is no evidence that Scott's Econo Inn instigated or is responsible for plaintiff's arrest, prosecution or incarceration.

Further, this defendant is not a state actor, nor has it acted in concert with a state actor.

Finally, defendant believes that plaintiffs civil rights were not violated, that the authorities [and any parties involved in this matter] acted in good faith and with probable cause and reasonable belief that plaintiff was responsible for the alleged crimes for which she was accused.

VI. ESTIMATED LENGTH OF TRIAL

Defendant estimates the trial will take three days.

VII. RESERVATION OF RIGHTS

1. Defendant reserves the right to offer rebuttal and/or impeachment evidence at trial.

2. Defendant reserves the right to supplement this Pre-Trial Statement at any time until the time of trial.

RESPECTFULLY SUBMITTED,

By: "s/"Gerald J. Hutton, Esq.
Gerald J. Hutton, Esquire
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Attorneys for Scott's Econo Inn, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of Defendant Scott Econo Inn, Inc.'s Pre-Trial Statement was electronically served upon all counsel of record this 10th day of March, 2006.

A.J Adams, Esquire
602 West 9th Street
Erie, PA 16502

(Attorney for Plaintiff)

Gary D. Bax, Esquire
Suite 202
900 State Street
Erie, PA 16501

(Attorney for Scott's Splash Lagoon, Inc.)

Respectfully submitted,

BASHLINE AND HUTTON

By: "s/" Gerald J. Hutton, Esq.
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